

Message Text

LIMITED OFFICIAL USE

PAGE 01 STATE 086798
ORIGIN STR-04

INFO OCT-01 EUR-12 IO-13 ISO-00 STRE-00 FEA-01 AGRE-00
CEA-01 CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01
INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01
AID-05 SS-15 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02
OMB-01 AF-10 ARA-06 EA-07 NEA-10 OIC-02 /135 R

DRAFTED BY STR:MPOMERANZ:ATN
APPROVED BY STR:MPOMERANZ
TPSC CHAIRMAN:WKELLY
STATE:JSPIRO
COMMERCE:DSCHLECHTY
TREASURY:JSCHOTT/WBARREDA
LABOR:RSCHULMAN/GPRATT
DOD:RBOOTON/JDARLING
EOB/OFPP:LHAUGH
-----182310Z 128990 /62
P 182116Z APR 77
FM SECSTATE WASHDC
TO USDEL MTN GENEVA PRIORITY
INFO USMISSION EC BRUSSELS PRIORITY
USMISSION OECD PARIS
AMEMBASSY OTTAWA PRIORITY

LIMITED OFFICIAL USE STATE 086798

E.O. 11652: N/A

TAGS:ETRD, MTN, OECD

SUBJECT: CANADIAN DRAFT PAPER ON GOVERNMENT PROCUREMENT

REF: MTN GENEVA 2493

1. WE HAVE EXAMINED THE CANADIAN DRAFT PAPER ON GOVERNMENT
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 STATE 086798

PROCUREMENT AND FIND MUCH IN IT THAT MIGHT BE VERY USEFUL AT
SOME POINT IN THE NEGOTIATIONS. WE BELIEVE THAT THE U.S.
COULD ACCEPT THE CANADIAN PROPOSAL AS A BASIS FOR LATER
NEGOTIATIONS IF CERTAIN MODIFICATIONS WERE MADE AND IF PRO-
POSAL WERE FOUND ACCEPTABLE BY OTHER KEY DELEGATIONS. HOW-
EVER, WE ARE CONCERNED THAT THE CANADIAN DRAFT MAY BE UN-
ACCEPTABLE TO EC (AS WELL AS OTHERS) AS BASIS FOR THE

NEGOTIATIONS. WITHOUT ADEQUATE GROUNDWORK TO ENSURE THAT KEY DELS WILL ACCEPT THE CANADIAN PROPOSAL AS A BASIS FOR NEGOTIATIONS, ITS FORMAL INTRODUCTION COULD RESULT IN A CONFRONTATION THAT WILL HALT PROGRESS IN THE GOVERNMENT PROCUREMENT NEGOTIATIONS. THE KEY, OF COURSE, IS THE REACTION OF THE EC TO THE CANDEL DRAFT. WHILE WE MIGHT, IF ASKED, TELL THE EC THAT THE DRAFT HAS MUCH TO COMMEND IT, WE ARE CONCERNED THAT OPEN SUPPORT BY THE U.S. MIGHT BE COUNTER-PRODUCTIVE AT THIS POINT. IF THE EC REACTION IS NEGATIVE, WE SHOULD GIVE THE CANADIANS AN OPPORTUNITY TO WORK IT OUT WITH THE EC. IF THIS DOES NOT COME TO PASS, WE CAN THEN STEP IN TO ENCOURAGE SOLUTION BASED ON WHATEVER DOCUMENT IS MORE LIKELY TO BE ACCEPTED. AGAINST THIS RATIONALE, WHICH IS PROVIDED SOLELY FOR MTN DEL, THE FOLLOWING POINTS SHOULD BE MADE TO CANDEL.

2. THE CANDEL SHOULD BE ASSURED THAT WE WELCOME ANY EFFORT WHICH WOULD SERVE TO MOVE THE CODE NEGOTIATIONS FORWARD MORE RAPIDLY. WE HOPE TO USE THIS MEETING TO CLARIFY SPECIFIC POINTS AND TO OBTAIN FURTHER INFORMATION FROM CANDEL AS TO THE RATIONALE BEHIND CERTAIN FEATURES OF THEIR DRAFT. HOWEVER, UNTIL WE OBTAIN SUCH INFORMATION AND HAVE RECEIVED SOME IDEA OF THE DRAFT'S RECEPTIVITY TO OTHER KEY DELEGATIONS, WE WILL RESERVE JUDGMENT ON THE USEFULNESS OF THIS DRAFT AS THE BASIS FOR MTN NEGOTIATIONS.

3. CANDEL SHOULD BE COMPLIMENTED HIGHLY ON THE EXCELLENT JOB IT HAS DONE TO CLEAN UP AND EDIT MUCH OF THE MATERIAL IN THE OECD DRAFT ON WHICH AGREEMENT HAS BEEN REACHED IN LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 STATE 086798

THE OECD. WE HAD ALWAYS ENVISAGED THAT SUCH AN EFFORT WOULD BE REQUIRED ULTIMATELY. WE APPLAUD THE CANADIAN EFFORT TO RESOLVE THE PROBLEM OF BID OPENINGS IN PARA 12(D) ON PG. 9 OF THE DRAFT BUT EXCEPT FOR THIS, EX POSTE PUBLICITY, AND THE MATERIAL ON SURVEILLANCE AND DISPUTE SETTLEMENT WE DISCOVER NO OTHER AREAS OF THE DRAFT WHERE OUTSTANDING UNRESOLVED MAJOR ISSUES ARE ADDRESSED. WE WOULD MOST APPRECIATE CANDEL THOUGHTS IN THIS REGARD.

4. WE ASSUME THAT CANDEL HAS DETERMINED THAT MTN SUBGROUP WILL NOT, NOTWITHSTANDING SOME EVIDENCE TO THE CONTRARY, EVER AGREE TO USE OECD DRAFT CODE AS A WORKING BASIS. IF WE ARE CORRECT IN THIS ASSUMPTION, WHY IS CANDEL NOW PRESENTING AN ALTERNATIVE DRAFT WHICH DOES NOT COVER ALL OF THE IMPORTANT CODE ISSUES (E.G., NATIONAL SECURITY PROVISIONS, INQUIRY RIGHTS, AND FINAL PROVISIONS ARE OMITTED)?

5. CANDEL SHOULD BE QUIRED AS WHAT SPECIFIC PROBLEMS THEY HAVE REGARDING THE NON-DISCRIMINATION PROVISIONS OF OECD

DRAFT. ARE THESE PROBLEMS NOT SURMOUNTABLE THROUGH REDRAFTING? IF REDRAFTING IS DESIRABLE CAN'T APPROPRIATE GATT LANGUAGE BE USED RATHER THAN MAKE REFERENCE TO GATT ARTICLES I AND III? WE FIND MUCH OF ARTICLE III, SUBPARAS. 1-7, IRRELEVANT TO THE SUBJECT OF PROCUREMENT. MORE IMPORTANTLY, WE CONSIDER THAT BY OPENING THE ROAD TO GATT ARTICLE REFERENCES WE WILL RUN THE RISK OF BEING SUBJECTED TO OTHER GATT LANGUAGE WITH WHICH WE HAVE GREAT PROBLEMS. A CLASSIC EXAMPLE OF THIS IS THE NATIONAL SECURITY LANGUAGE OF GATT ARTICLE XXI. OUR EXPERIENCE INDICATES THAT THE GATT LANGUAGE IS INADEQUATE AND WE THOUGHT THE CANADIANS SHARED OUR VIEW THAT THE NATIONAL SECURITY FORMULATION IN THE OECD CODE WAS TO BE PREFERRED. FURTHERMORE, ARE THE CANADIANS NOT GETTING THE SAME SIGNAL AS WE THAT THE LDC'S DO NOT WANT REFERENCES TO GATT BUT SEEK A CODE WHICH IS WHOLLY SELF-CONTAINED?

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 04 STATE 086798

6. WE WOULD BE MOST INTERESTED IN CANADIAN THINKING WHICH LEADS THEM TO INCLUSION OF SUB-PARA (E) IN OBJECTIVES PART OF THE DRAFT WHEN THERE IS NOTHING REGARDING S AND D FOR LDC'S IN REMAINDER OF DRAFT.

7. WE HAVE SEVERAL OTHER QUESTIONS REGARDING THE CANADIAN DRAFT:

A. REGARDING PARA (B) OF SCOPE AND COVERAGE SECTION, WHAT THRESHOLD VALUE DOES CANADA HAVE IN MIND? WOULD GOC PROPOSE TO TO LEAVE THIS LINE BLANK UNTIL AFTER AGREEMENT ON SUBSTANTIVE PROVISIONS IS REACHED?

B. UNDER (D) OF SCOPE AND COVERAGE, WHAT IS MEANT BY "TAKE SUCH REASONABLE MEASURES AS MAY BE AVAILABLE TO THEM"? IN TERMS OF OBLIGATIONS TO BE UNDERTAKEN BY SIGNATORIES, HOW DOES IT COMPARE TO OECD LANGUAGE -- "BEST ENDEAVORS" AND "USERA DE TOUS MOYENS DONT IL DISPOSE" (PARA. 3 IN OECD DRAFT)?

C. REGARDING THE SECTION ON TECHNICAL SPECIFICATIONS, IN ADOPTING LANGUAGE FROM THE PROPOSED CODE ON STANDARDS, DOES CANADA INTEND ANYTHING MORE THAN TO ESTABLISH CONSISTENCY IN LANGUAGE BETWEEN THE TWO DRAFT CODES?

D. UNDER INTERNATIONAL SURVEILLANCE AND DISPUTE SETTLEMENT PROCEDURES, IS THE PANEL PROVIDED FOR IN SUB-PARA (B) A STANDING PANEL OR NOT? CAN THE COMMITTEE ON GOVERNMENT PROCUREMENT, WHICH PRESUMABLY WILL MEET ONLY ANNUALLY OR SEMI-ANNUALLY, OPERATE QUICKLY ENOUGH TO RESOLVE DISPUTES? COULD MATTER BE REFERRED DIRECTLY TO PANEL? IF QUERIED ON

DISPUTE SETTLEMENT, WE SHOULD REMIND CANDEL THAT THIS SUBJECT IS STILL UNDER REVIEW BY OUR GOVERNMENT.

E. IN SINGLE TENDERING PARA 13(A) PG. 10 OF TENDERING PROCEDURES, WHAT PURPOSE IS SERVED BY LANGUAGE, "A SPECIFIED LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 05 STATE 086798

PROPRIETARY PRODUCT IS REQUIRED FOR WHICH NO REASONABLE ALTERNATIVE OR SUBSTITUTE EXISTS"? IS THIS NOT EMBRACED IN SUB PARA (B)?

F. UNDER INFORMATION REGARDING CONTRACT AWARDS, DOESN'T THE MONTHLY PUBLICATION (PARA 2) OBTAIN THE NEED FOR INTERESTED PERSONS TO REQUEST THE LISTED INFORMATION. VANCE

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: AGREEMENT DRAFT, PROCUREMENT
Control Number: n/a
Copy: SINGLE
Sent Date: 18-Apr-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE086798
Document Source: CORE
Document Unique ID: 00
Drafter: MPOMERANZ:ATN
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770134-0754
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770446/aaaabnnr.tel
Line Count: 189
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 1a653aa3-c288-dd11-92da-001cc4696bcc
Office: ORIGIN STR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 MTN GENEVA 2493
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 22-Dec-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2772923
Secure: OPEN
Status: NATIVE
Subject: CANADIAN DRAFT PAPER ON GOVERNMENT PROCUREMENT
TAGS: ETRD, CA, OECD, MTN
To: MTN GENEVA
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/1a653aa3-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009